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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY L. HIRKA and STEVEN J. FOX

Appeal 2010-001593
Application 09/655,886
Technology Center 3600

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the rejection of claims 1-51 which have been twice rejected. Claims 1-51 are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Oral arguments were presented on February 9, 2011.

SUMMARY OF THE DECISION

We AFFIRM-IN-PART.

THE INVENTION

The Appellants' claimed invention is directed to a system and method for a linked account having a sweep feature enabling individuals to use a cash account backed by a credit account (Spec. 3:4-8). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A system for processing electronic transactions, comprising:
 - a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn;
 - a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and
 - an authorization server, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, and performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

| | | |
|--------|-----------------|--------------|
| Atkins | US 5,644,727 | Jul. 1, 1997 |
| Schein | US 6,226,623 B1 | May 1, 2001 |

The following rejections are before us for review:

1. Claims 1-51 are rejected under 35 U.S.C. § 103(a) as unpatentable over Atkins and Schein.

THE ISSUES

At issue is whether the Appellants have shown that the prior art references of Atkins and Schein fail to disclose or suggest the argued claim limitations for each respective claim.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:²

FF1. Atkins has disclosed a system for the operation of one or more financial accounts for exchange, investment, or borrowing (Title).

FF2. Atkins has disclosed that a prioritization function suggests a portfolio of asset and liability accounts that may be credited and/or debited to provide the required funds for consumption and to form investments (Abstract).

² See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF3. Atkins has disclosed that the system automatically manages a clients budgetary affairs through a system of expert sweeps (Abstract). Atkins at Col. 60:6-16 discloses that a transaction verification procedure determines if the transaction is within the HOME Account budget permitted for the customer.

FF4. Atkins has disclosed that if the account is imbalanced the client may reallocate the assets and liabilities within the client account. If not balanced after this modification the system may initiate the liquidation of certain asset accounts and reduce the balances of one or more liability accounts (Abstract).

FF5. Atkins at Col. 13:44-45, Col. 43:49-51, Col. 42:57-63, Col. 7:48-50, Col.10:1-10, Col. 11:3-5, 10-16, and 18-27 does not specifically disclose a second interface to at least one credit account used to back up at least one cash account in the event of insufficient funds in the at least one cash account.

FF6. Atkins at Col. 42:47-53 discloses that mortgage payments may be deducted from automatically from an individual's payroll.

FF7. Atkins in Fig. 3 shows an account list (54) linked to multiple accounts (58, 60).

FF8. Schein has disclosed a global financial services integration system and process (Title).

FF9. The Specification at Page 6, lines 10-18 state that:

A linked account instrument (not shown, for instance a magnetically encoded plastic card similar to a credit card or ATM card) may be provided to consumers to access funds in an existing cash account 160 such as a DDA held at a financial institution, such as a bank or savings and loan, or other institution.

Transactions may be initiated by swiping the linked account card at a

point of sale (P.O.S.) terminal 110 when purchasing goods and/or services from merchants, or via other mechanisms such as telephone or Internet remote authorizations against the linked account card.

ANALYSIS

Claims 1-23, 48 and 51

The Appellants argue that the rejection of claim 1 is improper because Atkins fails to disclose the claim limitation for “a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account” (Br. 15-19).

In contrast, the Examiner has determined that Atkins discloses the cited claim limitation at Col. 13:44-45, Col. 43:49-51, Col. 42:57-63, Col. 7:48-50, Col.10:1-10, Col. 11:3-5, 10-16, and 18-27 (Ans. 4, 19-21).

We agree with the Appellants. Atkins at Col. 13:44-45, Col. 43:49-51, Col. 42:57-63, Col. 7:48-50, Col.10:1-10, Col. 11:3-5, 10-16, and 18-27 does not disclose a second interface to at least one credit account used to back up at least one cash account in the event of insufficient funds in the at least one cash account (FF5). Claim 1 includes a specific claim limitation for “a second interface to *at least one credit account used to back said at least one cash account*” (emphasis added), and this has not been shown in the Atkins reference at the portions referenced by the Examiner (FF5). For these reasons, the rejection of claim 1 and its dependent claims is not sustained. Claim 51 contains a similar limitation and the rejection of this claim is not sustained for the same reasons.

Claims 24-47, 49-50

The Appellants argue that the rejection of claim 24 is improper because both Atkins and Schein fail to disclose a “linked account instrument” or “performing sweeps” as claimed (Br. 22-23).

In contrast, the Examiner has determined that Atkins discloses these features (Ans. 13-16, 18-19, 23-25).

We agree with the Examiner. We first construe the meaning of the term “linked account instrument” as used by the Appellants in the claims. We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). The Specification at page 6 states in part:

A linked account instrument (not shown, for instance a magnetically encoded plastic card similar to a credit card or ATM card) *may be provided to consumers to access funds in an existing cash account* 160 such as a DDA held at a financial institution, such as a bank or savings and loan, or other institution. (FF9, emphasis added).

Thus, this citation in the Specification does not require that the “linked account instrument” is limited to a cash account backed by a credit account and the term is broad enough to encompass an account linked to a card or some other similar manner. Atkins in Fig. 3 shows an account list linked to multiple accounts (FF7) and under a broadest reasonable interpretation this would serve as the claimed “linked account instrument”. Atkins has also disclosed performing sweeps (FF3). Claim 24 recites that

sweeps are performed which has been shown in Atkins (FF3) and the claim language related to a backing credit account is provided in alternative language only. With regards to claims 25-26, the accounts in Atkins that could access cash, can be considered to be “demand deposit accounts” as claimed. With regard to claim 32 the system of Atkins shows an account list linked to multiple accounts (FF6) and the system would generate “automated clearing house debits” during transfers. With regard to claim 40 the use of a “daily limit” on the cash account is considered a method readily inferred by one of ordinary skill in the art to prevent fraud and spending past the limits of the account. For these reasons, the rejection of claims 24-26, 32, 40, and the remaining dependent claims which have not been separately argued is sustained.

The Appellants argue that the rejection of claim 50 is improper because both Atkins and Schein fail to disclose a “linked account instrument” or “performing at least one automatic withdrawal” as claimed (Br. 22-23). In contrast, the Examiner has determined that Atkins discloses these features (Ans. 10-16).

We agree with the Examiner. As discussed above in regards to claim 49, the Specification does not define the term “linked account instrument” to require a cash account backed by a credit account. Atkins has disclosed that mortgage payments may be deducted from automatically from an individual’s payroll (FF6) which serves “automatic withdrawal” as the claim recites. For these reasons the rejection of claim 50 is sustained.

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DECISION

The Examiner's rejection of claims 1-23, 48 and 51 is reversed. The Examiner's rejection of claims 24-47, 49-50 is sustained.

AFFIRMED-IN-PART

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